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Attorneys for Defendant/Counter-Plaintiff,
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
 CERAMICS, INC. dba GLIDEWELL
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.
 SACV11-01309-DOC(ANx)

**DECLARATION OF DR.
 GARY P. TOBIN IN
 SUPPORT OF KEATING
 DENTAL ARTS, INC.'S
 MOTIONS FOR SUMMARY
 JUDGMENT**

Honorable David O. Carter

1 I, Dr. Gary P. Tobin, hereby declare as follows:

2 I am a practicing dentist who has purchased dental restorations from
3 Keating Dental Arts, Inc. ("Keating"). My dental office is located at 16055
4 Ventura Blvd., Suite 1035, Encino, CA 91436. I have personal knowledge of
5 the matters set forth herein. If called upon to testify, I could and would testify
6 as follows:

7 1. I am licensed to practice dentistry in the state of California. I
8 received an undergraduate degree from Queens College in New York in 1978. I
9 received my Doctor of Dental Surgery (DDS) degree from New York University
10 in 1981 and have been practicing dentistry for over 31 years. In 1986 I moved
11 to California where I have been practicing since that time. It has been a regular
12 part of my dental practice to treat patients in need of dental restorations.

13 2. To address my patients in need of dental restorations, it has been
14 my practice to purchase crowns and bridges from dental laboratories that
15 manufacture the restorations in response to my specifications. In this regard, I
16 provide the dental laboratories with a prescription form that identifies the
17 patient, the tooth (or teeth), and the specific dental restoration product that I
18 would like manufactured for the patient.

19 3. Since my dental practice began in 1981, I have ordered dental
20 restorations from a number of different dental laboratories. I have been ordering
21 dental restorations from Keating since around August 2011.

22 4. I have ordered different types of dental restorations from Keating,
23 including crowns with ceramic overlays and all-zirconia crowns.

24 5. The first time I ordered a zirconia crown from Keating was in
25 August 2011 when I ordered a "KDZ Bruxer" crown.

26 6. I learned of Keating's KDZ Bruxer product by calling Keating's
27 lab and asking if they sold an all zirconia crown.

28 7. I ordered Keating's KDZ Bruxer crown for one of my patients with

1 bruxism because I wanted a monolithic zirconia crown that would be stronger
2 than a crown having a porcelain overlay.

3 8. In October 2012, I again ordered a KDZ Bruxer crown from
4 Keating for tooth #3 for one of my patients. Attached as **Exhibit A** is a true and
5 correct copy of the Keating Dental Arts prescription form that I submitted to
6 Keating for this order.

7 9. In the order form attached as Exhibit A, I specified the product that
8 I was ordering by having my lab assistant, under my direction, write “#3 –
9 Bruxzir crown” in the “Instructions” section of the form. I had her write
10 “Bruxzir” on the prescription form because to me that term meant an all zirconia
11 crown for bruxers. I knew I was ordering the crown from Keating and I wanted
12 to receive a crown made by Keating.

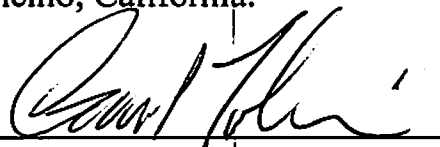
13 10. When I directed “Bruxzir” to be written on the prescription form, I
14 did not intend to order a crown made by Glidewell Laboratories. Nor did I
15 intend to order a crown made from material that came from Glidewell
16 Laboratories. I did not think there was an affiliation between Keating and
17 Glidewell Laboratories when I placed this order.

18 11. I have seen the term “bruxzir” used by various dental labs and in
19 dental advertisements for the past few years to refer to all zirconia restorations
20 for bruxers. Based on my experience, I do not associate that term exclusively
21 with any one company.

22 12. I am aware of Glidewell Laboratories and have ordered from them
23 in the past. I do not currently order from them. When I order dental
24 restorations from non-Glidewell dental laboratories (such as Keating), I do not
25 expect any part of the product I am ordering to come from Glidewell.

26 I declare under penalty of perjury under the laws of the United States of
27 America that the foregoing is true and correct.
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Executed November 5, 2012, in Encino, California.

A handwritten signature in black ink, appearing to read "Gary P. Tobin", written over a horizontal line.

Dr. Gary P. Tobin

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EXHIBIT A

CONFIDENTIAL ATTORNEY'S EYES ONLY



Keating
Dental Arts
Creating smiles everyday™

16881 Hale Avenue, Irvine, CA, 92606
Email: shade@keatingdentalarts.com

800-433-9833

Fax 949-955-2199

Doctor's Account # _____

TOEG

Phone #

(818) 919-5840

Dr. **DR. GARY P. TORIN**

REDACTED

Patient _____

LAST

FIRST

Date Due In Office

10/27/11

PLEASE SEND:

☐ RX forms ☐ Boxes ☐ Mailing labels

ENCLOSURES

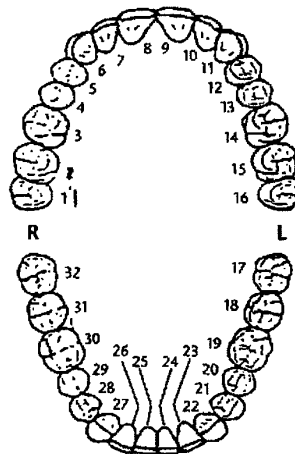
LAB USE ONLY

☐ Photo(s) ☐ Analog ☐ Models
☐ Implant parts ☒ Impression ☒ Bite
☐ Shade tab ☐ Other

R_x SPECIFIC INSTRUCTIONS

* Standard unless specified

#3-Brixzir Crown
Shade A1



Signature: _____

License #: _____

TERMS: Customer agrees to company policy as stated on reverse.

Age: _____ Sex: _____

☐ Dr. to die trim ☐ Metal try-in
☐ Finish to porcelain

Please indicate the distribution of hues and the types of characteristics desired:

SHADE INSTRUCTIONS

Vita-Lumin: A1

Noritake: _____

Vita-3D: _____

Stump shade: _____



BUCCAL COLLAR DESIGN

☐ Hairline or _____mm buccal
☐ Porcelain junction margin*
☐ Porcelain butt margin (90° shoulder required)

IF NO OCCLUSAL CLEARANCE

☐ Metal occlusion
☐ Reduction coping
☐ Spot opposing
☐ Make permanent note

ANTERIOR DESIGN

☐ 1/4 Metal lingual
☐ 1/2 Metal lingual
☐ 3/4 Metal lingual

METAL DESIGN

☐ All porcelain coverage
☐ Metal coping with porcelain coverage*
☐ Metal occlusal excluding buccal CUSP
☐ Metal occlusal including buccal CUSP

OCCLUSAL STAINING

☐ None ☐ Light*
☐ Medium ☐ Dark

PONTIC DESIGN

☐ Modified ridge lap*
☐ Full ridge lap
☐ Sanitary
☐ Bullet
☐ Ovate

☐ KDA Denture
☐ KDA Premium Denture
☐ KDA Ultra Premium Denture
☐ Locator retained
☐ Bar retained (Titanium bar)
☐ Screw retained hybrid (Titanium bar)

REMOVABLES

☐ TCS*/Valplast* Partial Complete
☐ TCS*/Bego
☐ Valplast*/Bego
☐ Cast chrome
☐ Acrylic stayplate
☐ Delineator™
☐ Lab select complete design
☐ Frame try-in
☐ Frame w/occlus. rim
☐ Frame w/set-up try-in
☐ Finish

PFM

☐ Non-precious*
☐ Semi-precious
☐ White high noble
☐ Yellow high noble
☐ Captek™

IMPLANTS

CROWN
☐ PFM-- Semi-precious*
☐ PFM-- White high noble
☐ Full cast yellow semi-precious
☐ Captek™
☐ High noble 56
☐ KDZ Max
☐ KDZ Ultra
☐ IPS® e.max

ABUTMENT

Atlantis™
☐ Titanium* ☐ Gold-hue
☐ Zirconia
3i*
☐ Titanium ☐ Zirconia
☐ Gold anodized
☐ Custom UCLA

FULL CAST

☐ High Noble 56-Type III
☐ Gold inlay/onlay-Type II (JRVIT)
☐ White High Noble
☐ White semi-precious
☐ Yellow semi-precious

METAL-FREE RESTORATIONS

KDZ Family (CAD/CAM)

☐ KDZ Bruxer
☐ KDZ Max
☐ KDZ Ultra*
☐ Procera®

Pressables

☐ IPS® Empress Esthetic
☐ Stained & glazed only*
☐ Cut-back & layered
Stump shade required
☐ IPS® e.max
☐ Stained & glazed only*
☐ Cut-back & layered
Stump shade required

Veneers

☐ KDA Foil Veneers (Stacked feldspathic porcelain)
☐ IPS® Empress Esthetic*
☐ IPS® e.max
Stump shade required

KDA TEMPS

☐ Diagnostic wax-up
Abutments #s: _____
Pontics #s: _____
☐ Wire* ☐ Cast metal frame
☐ Splinted ☐ Individual

APPLIANCES

☐ Night Guard - Astron CLEARsplint™
☐ Night Guard - Hard Thermoformed
☐ Bleaching Tray
☐ Foam liner
☐ Reservoir
☐ Clear Pro-Guard
☐ Night Guard - Hard Hand Waxed
☐ Night Guard - Soft
☐ Ultra Guard (hard/soft)
☐ 1.0 mil Clear Ortho Retainer

KDA-001937